IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

First Appeal No.l505 of l996
Manmad Municipal Council.... Appellant
vs
Rikabchand M Lalwani and anr.. Respondents
with
First Appeal No.l506 of l996
Manmad Municipal Council... Appellant
vs
Shivchand Manakchand Lalwani & ors.. Respondents
with
First Appeal No. l507 of l996
Manmad Municipal Council.. Appellant
vs
Shivchand Manakchand Lalwani and ors.. Respondents
with
Cross Objections St No.l30l7 of l997
with
First Appeal No. l508 of l996
Manmad Municipal Council.. Appellant
vs
Bhika Bhaurao Sanap by Lrs and ors.. Respondents

Mr.R.M.Agrawal with G R Agrawal for appellants
Mr. M.D.Angal for respondent no.l
Mr. K K Tated AGP for State
Mr.P N Joshi for respondent no.5
with
First Appeal No.l83 of l998
with Civil Application No.l433 of l998
The State of Maharashtra .. Appellants
vs
Rikabchand Manakchand Lalwani and ors..respdts
Mr.K.K.Tated AGP for appellants
Mr.M D Angal for respondent no.l
Mr. R M Agrawal for respondent no.2
with
First Appeal No. 4l5 of 2000
The State of Maharashtra... Appellants
vs
Shivchand Manakchand Lalwani and ors..respdts
Mr.K.K.Tated AGP for appellants
Mr. M D Angal for respondent nos.l to 4
Mr. R.M. Agrawal for respondent no. 5
with
First Appeal No. 4l6 of 2000
The State of Maharashtra.. Appellants
vs

Bhika Bhaurao Sanap and ors.. respdts
Mr.K.K.Tated AGP for appellants
Mr. P N Joshi for respondent nos.l to 8
Mr. R M Agrawal for respondent no.9
with
First Appeal No.5l6 of 200l
The State of Maharashtra... Appellants
vs
Shivanand Manakchand Lalwani & ors..respdts
Mr.K.K.Tated AGP for appellants
Mr. M D Angal for respondent no.l & Lrs
Mr. R.M.Agrawal for Manmad Mun Council
with
First Appeal No. l30 of 2000
Rikabchand Manakchand Lalwani.. appellant
vs
State of Mah and ors..respondents

Mr. M.D.Angal for appellant
Mr. K K Tated for respondent nos.l and 2
Mr. R M Agrawal with G.R.Agrawal for respondent no. 3

CORAM: A.P.SHAH & S.U KAMDAR JJ.

Dated 27.8.2004

P.C:

l. These first appeals are directed against the common award passed by the learned Joint District Judge, Nasik dated 28.6.l996 in Land Reference Nos. 270 of l987, 27l of l987, 272 of l987 and 288 of l993 and having heard the arguments of the learned counsel appearing for the contesting parties in appeals we propose to dispose of these appeals by this common judgment.

2. Briefly stated the facts are that various

pieces of lands originally belonging to the claimants situated at Manmad were proposed to be acquired by the Government for Integrated Urban Development Project at Manmad, under the Land Acquisition Act, l894, hereafter referred to as "the LA Act", by notification under section 4(l) thereof published on l2.3.l98l. The acquisition of the said lands having been completed by the declaration made under section 6 of the LA Act, notices under section 9 were issued to the claimants calling upon them to make claim for compensation for the acquired lands before the Special Land Acquisition Officer, I Nasik,hereinafter referred to as the SLAO. Pursuant to section 9 notices the SLAO after considering the claims made by the claimants passed the award dated 23.9.l986 under section ll of the LA Act and determined the market value of the claimants acquired lands at Rs. 3 per sq mt and awarded to them the amount of compensation together with statutory benefits. Since the award of the SLAO was not acceptable to the claimants, they made applications to the SLAO under section l8 of the LA Act and got the applications referred to the civil court for determination of the just compensation payable to them. All these references registered

as L.R Nos. 270, 27l and 272 of l987 and 288 of l993. On these references the learned Joint District Judge, Nasik on holding inquiry as required by the said LA Act and on the basis of the said inquiry so held, determined the market value of the claimants' land at Rs.200 per sq mt and accordingly made the award on 28.6.l996 together with statutory benefits.This award of the learned Joint District Judge is challenged by the Manmad Municipal Council in First Appeal Nos. l505 of l996, l506 of l996, l507 of l996 and l508 of l996. The State of Maharashtra has also preferred appeals against the award being First Appeal Nos. l83 of l998, 4l5 of 2000, 4l6 of 2000 and 5l6 of 2000. First Appeal No l30 of 2000 is preferred by one of the claimants claiming further enhancement of compensation to Rs.300 per sq mt. In First Appeal No.l507 of l996 also the claimants have filed Cross Objections to claim enhancement of compensation at the rate of Rs.300 per sq mt. The lands acquired in the present case were agricultural lands and the claimants had claimed compensation at the rate of Rs.80 per sq mt.The learned Judge, however, relying upon certain sale instances proceeded to award compensation at the rate of Rs.200 per sq mt.

3. Shri Agrawal and Shri Tated appearing for the Manmad Municipal Corporation and State of Maharashtra respectively contended that the trial court has committed serious error in determining the value of the acquired lands at Rs.200 per sq mt. The Index II register pertaining to transactions effected by the claimants themselves out of very Survey Numbers which were the subject matter of the acquisition show that during the relevant period the rateswere ranging from Rs.10 to Rs.40 per sq mt and that too was the rate of the plots out of a sanctioned lay out. It is urged that the trial court has excluded this crucial evidence from consideration without assigning any reason. According to the learned counsel in view of the decision of 3 Judge Bench of the Supreme Court in Land Acquisition Officer and Mandal Revenue Officer vs V.Narasaiah (200l) 3 SCC 530, it is not necessary to examine vendor or purchaser and the certified copy of the Index II register would be admissible under section 5lA of the LA Act. It was urged that the sale instances/ transactions produced by the claimants pertain to fully developed properties in the heart of the city and the same being smaller plots could not be exemplar relevant to the acquired lands which are situated

away from the main township of Manmad city. In any event, according to the learned Counsel, the learned Judge could not have awarded compensation in excess of the amount claimed by the claimants. Reliance was placed on the decisions of the Supreme Court in State of Punjab and ors vs Raman Rai, (l995) 5 SCC 6l0 and Ujjain Vikas Pradhikaran vs Tarachand (l996) 5 SCC 574. It was also submitted that there is difference between developed area and the area having potential value which is yet to be developed and, therefore, in any event, the learned Judge ought to have made necessary deductions and having regard to the facts and circumstances of the present case such a deduction could not be less than 50%.

4. In reply Shri Angal and Shri Joshi appearing for the claimants submitted that the lands so acquired has high N.A.potentials and there are schools, gurudwara, market yard, daily bazars and a number of bungalows situated near and around the acquired lands. The learned counsel therefore urged that the sale instances relied upon by the Reference Court ought not to discarded or disturbed by this court. It was also submitted that after amendment to section 25 of the LA Act there is no

fetter on the court's power to grant compensation in excess of the amount claimed in the reference application. In this connection reliance was placed on the decision of the Supreme Court in Land Acquisition Officer cum DSWO AP vs B V Reddy and Sons (2002) 3 SCC 463 and a decision of the Full Bench of Karnataka High Court in Special Land Acquisition Officer (NHW) Dharwar vs.Kallangowda AIR l994 Karnataka ll2. As regards the extracts of Index II register produced by the Municipal Council it was vehemently argued by the learned counsel for the claimants that such extracts are not admissible inspite of introduction of section 5lA of LA Act unless the purchaser or seller has been examined. Reliance was placed on the decision of the Supreme Court in Meherban and ors vs State of UP an ors, AIR l997 SC 2664. Further according to the learned counsel even assuming that any deduction has to be made towards development charges it cannot be more than l/3rd of the market value and the true market value of the land being Rs 300 per sq mt there is neither any reason nor any cause to disturb the market rate awarded by the learned Judge at Rs.200 per sq mt.

5. Before embarking upon the inquiry as to the

correctness of the contentions raised before us it would be appropriate to notice the decisions of the Supreme Court laying down the basic principles in the matter of determination of market value under the LA Act. In Shahaji Kuriakose vs Indian Oil Corpn Ltd (200l) 7 SCC 650 the court has observed as under;

> "Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under section 4 of the Act. But comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land related in the sales. <u>The factors laid down inter alia are: (l) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time</u>

proximate to the date of issue of notification under section 4 of the act, (3) that the land covered by the sale must be in the vicinity of the acquired land,(4) that the land covered by the sales must be similar to the acquired land and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site, or nature of land between land covered by sales and land acquired it is open to the court to proportionately reduce the compensation for acquired land then what is reflected in the sale depending upon the disadvantages attached with the acquired land."

(Emphasis supplied)

6. Again in Land Acquisition Officer Kammarapally Village, Nizamabad District, A.P vs Nookala Rajamallu and ors 2004(3) SBR l84 the court observed as under:

"6. Where large area is the subject matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to few decisions of this Court in The Collector of Lakhimpur v Bhuban Chandra Dutta (AIR 1971 SC 2015).Prithvi Raj Taneja (dead) by Lrs v. The State of Madhya Pradesh & Anr (AIR 1977 SC 1560) and Smt. Kausalya Deol Bogra and Ors etc v Land Acquisition Officer, Aurangabad & Anr (AIR 1984 SC 392).

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of lands. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

8. In the case of Suresh Kumar v. Town Improvement Trust, Bhopal (AIR 1989 SC 1222) in a case under the Madhya Pradesh Town Improvement Trust Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquired not undue deprivation on the part of the owner.....

9. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made. (i) when sale is within a reasonable time of the date of notification under section 4(l). (ii) it should be a bonafide transaction (iii) it shuld be of the land acquired of the land adjacent to the land acquired, and (iv) it should possess similar advantages.

l0. It is only when these factors are present, it can merit a consideration as a comparable case (see The Special Land Acquisition Officer, Bangalore v T Adinarayan Setty (AIR l959 SC 429).

ll. The evidence of record shows that the acquired lands were agricultural lands. Obviously, their valuation would differ to a considerable extent from the land used for house sites. In such a case, necessary deductions for the extent of land acquired for the formation of roads and other civic amenities, expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realization of the price,the profits on the venture etc. are to be made.(see Administrator General of West Bengal v Collector, Varanasi (l988(2) SCC l59).In Brig Sahib Singh Kolha and ors vs Amritsar Improvement Trust and ors (l982(l) SCC 4l9) the deduction for such development was taken as 53%".

(Emphasis supplied)

7. In the light of these well settled principles when we peruse the record it is seen that the claimants had mainly relied upon 3 instances. The first being in the case of one Smt. Indirabai Gaikwad whose saw mill was acquired for the same scheme by the government. L R No.l32 of l986 filed by Smt.Gaikwad was decided by the same learned Judge on 29.7.l995 and enhanced compensation was granted at the rate of Rs.300 per sq mt. The second instance pertains to the property of one Taherali which was acquired in the year l97l and rate of this land was fixed by the High Court at Rs.250 per sq mt in l975. Lastly reference was made to sale of a plot admeasuring about 100 sq.ft. in CTS no.257 at the rate of Rs.209 per sq mt by the Collector. The certified copy of the sale deed is at Exh. l3 of the record. On the basis of these instances the claimants have set up a claim of Rs.300 per sq mt.though in the claim petition they claimed only Rs.80 per sq mt. The Municipal Council has produced on record a map showing the topography of the city of Manmad. This map is prepared by the Asst Director of Town Planning and is at Exh. 5l. The Municipal Council has also

produced certified copies of the Index II registers of sales and purchases of adjoining lands by claimants themselves. It appears that the acquired lands are situated beyond a brook known as Panjan Nallah. The area beyond Panjan Nallah was not fully developed at the relevant time.There is no dispute that the land of Taherali was a fully developed house property in the heart of the city. A portion of this property was acquired in 1971 for road widening by Manmad Municipal Council. However, no compensation was paid to the owners. Ultimately the owners i.e.Taherali and others filed a writ petition wherein an order came to be passed by this Court to pay the compensation amount to Taherali towards compensation for the acquired property. In our opinion, this is not a comparable instance. It is not clear whether the saw mill of Smt. Gaikwad is in the main town or is beyond the Panjan Nallah but one thing is clear that it was small plot used for the purpose of business of saw mill. The State Government has preferred appeal against the award made in L R of Indirabai Gaikwad and the same is pending in this court. So far as CS No 257/l5 is concerned it is seen that the area sold by the Collector is only l00 sq ft and the property is situated in the main town. When large

area is the subject matter of acquisition the rate at which small plots are sold cannot be said to be safe criteria. Plots of Indirabai Gaikwad and Suvarnalal Dhingra (CS No.257/15) are not comparable instances to the lands acquired in the present case.

8. In the present case the Municipal Council has produced on record extracts of Index II register of sales and purchases made by the claimants in respect of adjoining lands. The Junior Engineer Shri Shantaram Patil who was examined by the Municipal Council has specifically deposed about these transactions and there is no challenge to this testimony in the cross examination. The following chart shows the transactions effected by the claimants themselves in respect of the adjoining property :

Sr no	Page no	Sellers Name	S.No	Area sq.m	cost	Rate per sq mtr	Sale date
l.23		Kalyanchand Lalwani	374/2	222.96	9600	43.06	9.2.88
2.45		Rajendra	373/l/A	l57.50	7500	23.8l	l6.l.85

	Lalwani		plot l &2(l57.5)			
3.46	Rajendra Lalwani	373/l/A	l57.5 Plot 3 & 4(l57.5)	7500	23.8l	l6.l.85
4.48	Rajendra Lalwani	373/l/A	l5l.l0 plot l0	4000	26.47	22.l.85
5.5l	Kalyanchand Lalwani	374/2	222.96 plot 2l	9000	40.37	l.l.87
6.56	Kalyanchand Lalwani	374/2	222/96 plot l4	9600	43.06	8.7.87
7.57	Kalyanchand Lalwani	374/2	222.96 plot 26	9600	43.06	22.7.87

9. The Municipal Council of Manmad has also placed on record extsracts of Index II registers in respect of transactions effected by various other parties pertaining adjoining lands during the period l982 to l987 and it is clearly seen that the rates at the relevant time were ranging between Rs.30 to Rs.l00 per sq.meter. We hasten to add that all these transactions were relating to smaller plots admeasuring about l0 to 40 sq mts. The learned counsel for the claimants vehemently

argued that the certified extracts of Index II register are not admissible in evidence. Reliance in this connection was placed on a 3 Judge Bench decision of the Supreme Csourt in the case of Meherban and ors vs State of U P and ors (supra).It is true that in that case the Bench has held that since none connected with the sale deeds was examined the sale deeds are inadmissible in evidence though certified copies marked under section 5lA are available and therefore all the sale deeds stand excluded. The issue of admissibility again fell for consideration before a 3 Judge Bench in Land Acquisition Officer vs V Narasaiah (supra) and the court has categorically ruled that by virtue of section 5lA of the L.A Act the certified copy of document registered under the Registration Act, l908 including a copy under section 57 of the said Act may be accepted as evidence of the transaction recorded in such document. It was held that it is open to the court to accept the certified copy as reliable evidence and without examining parties to the document. This does not however preclude the court from rejecting the transaction itself as being mala fide or sham provided such a challenge is laid before the court. The decision in V Narasaiah’s case was

followed in The State of Haryana vs Ram Singh (supra) where the court rejected the argument that the sale deeds are inadmissible only on the ground that the parties to the documents have not been examined by the State and it was observed that it is not the law that a certified copy of the registered agreement for sale is inadmissible in evidence unless the parties to the document are examined to prove it. That would be contrary to section 77 read with sections 74(2) and 76 of the Evidence Act, and more specifically section 5lA of the LA Act. As far as the provisions of Evidence Act are concerned certified copy of a registered sale deed is admissible in evidence and does not need to be proved by calling witness. Thus the Supreme Court has definitely held that by virtue of Section 51-A of the L A Act, a certified copy of the document registered under the Registration Act, including the copy under sec.57 of the said Act can be accepted as evidence of the transaction recorded in the sale document without examining the parties to the document. Now, we have to consider whether the decision in the case of Maherban and others Vs. State of U.P. and others prevails or the decision in Land Acquisition Officer Vs.Narsaiah prevails. It is manifest that when two directly contradictory

decisions of the superior Court of equal authority are extant then both of them cannot be binding on the courts below. Inevitably,a choice, though a difficult one, has to be made in such a situation. There is a controversy among foreign as well as Indian jurists about the course that the High Court should follow when it is confronted with the situation of facing contradictory views of the Supreme Court on a given point. Some opined that it is possible for the High Court to prefer the view which commends to it and some opined that latter view must prevail. By and large, as far as this Court is concerned, law appears to have been settled on a view that latest judgment of the bench of same strength has a binding force. (See Vasant Tatoba Hargude vs. Dikkaya Muttaya Pujari, AIR 1980 Bom.341; Union of India Vs.K.S.Subtramanian, 1976 Lab.I.C.1551). More over on principle, the view taken in Land Acquisition Officer Vs. Nzarsaiah commends to us and we think that that is a right view. We, therefore, with great respect, prefer to follow the judgment rendered in Narsaiah's case.

10. It is seen from the chart reproduced above that the claimants themselves had entered into

transactions in respect of the adjoining lands at the rate ranging between Rs.23.89 to Rs.43.06 per sq mt. It is also pertinent to note that these transactions being in respect of adjoining lands, they are comparable sale instances as the claimants themselves had sold the lands to various parties. Therefore the learned counsel appearing for the appellants are justified in placing reliance on these documents. We hasten to add that section 92 of the Evidence Act preclude the party from leading evidence contrary to the terms of registered documents and it is not therefore open to the claimants to urge that even though their sale deeds showed price not more than Rs.40 per sq mt the real market value was Rs.200 per sq mt.To permit a party to so urge would be to give a premium to dishonesty.The parties who undervalue their documents for purpose of payment of stamp duty, cannot be allowed then claim that their own documents does not reflect the correct market value. (See Krishi Utpadak Mandi Samiti Sahaswan Vs.Bipin Kumar; (2004) 3 LRI 317.)

l1 In our opinion the trial judge has committed serious error in awarding compensation at the rate of Rs.200 when the claimants themselves had claimed

at the rate of Rs.80 per sq mt . The sale instances relied upon by the learned Judge were not comparable instances. The lands acquired were comparatively very large and sale instances relied upon were of very small plots and therefore we are of opinion that the compensation awarded by the learned Judge is far in excess of market value of the property. In the wake of the entire material available on record it is clear that the prices of small plots were ranging in between Rs.30/- to Rs.100/- per sq.meter and having regard to the fact that certain deduction will have to be made when transactions relate to the smaller plots, the market value of the property could not be more than Rs.30/- per sq.meter and, therefore, it would be just and proper to award compensation to the claimants at the rate of Rs.30/- per sq.meter.

12. In view of the foregoing discussion, the judgment and order of the learned Joint District Judge dated 28th June, 1996 is modified and the rate of Rs.200/- per sq.meter is substituted with that of Rs.30/- per sq.meter and it is held that the claimants shall be entitled to claim compensation at the rate of Rs.30/- per sq.meter together with statutory benefits. If the amount

withdrawn by the claimants under the interim orders passed by this Court is in excess of the amount of compensation awarded under this judgment, then the claimants shall refund the differential amount to the Municipal Council with simple interest at the rate of 6% p.a. from the date of withdrawal of the money till payment.

13. In the result, appeals partly succeed with no order as to costs.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE FCJURISDICTION

First Appeal No. l505 of l996 and ors

Date of Judgment: 27.8.2004

For approval and signature of:

The Hon'ble Mr.A.P.SHAH J.

The Hon'ble Mr.S.U KAMDAR J.

1. Whether the Reporters of the local papers may be allowed to see the judgment/order?

2. Whether to be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad and Goa offices?